

ARGUED DECEMBER 14, 2018

NO. 18-3071

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

IN RE GRAND JURY SUBPOENA

Appeal from the United States District Court for the District of Columbia
No. 1:18-mj-0041

STATEMENT OF THE STATUS OF RELATED MATTERS

LEE ROSS CRAIN
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166-0193
(212) 351.4000

EMILY RIFF
GIBSON, DUNN & CRUTCHER LLP
1801 California Street, Suite 4200
Denver, Colorado 80202-2642
(303) 298.5700

THEODORE J. BOUTROUS
Counsel of Record
THEANE EVANGELIS
GIBSON, DUNN & CRUTCHER
LLP
333 South Grand Avenue
Los Angeles, California 90071-
3197
(213) 229.7000
tbutrous@gibsondunn.com

BRUCE D. BROWN
KATIE TOWNSEND
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, DC 20005
Phone: 202.795.9300
Facsimile: 202.795.9310

Counsel for Movant Reporters Committee for Freedom of the Press

STATEMENT OF THE STATUS OF RELATED MATTERS

On January 9, 2019, the Reporters Committee for Freedom of the Press (the “Reporters Committee”) filed in this Court a Motion to Unseal. On that same day, the Reporters Committee moved to intervene in proceedings relating to this matter in the Supreme Court so that it could file a Motion to Unseal those proceedings as well. On January 25, 2019, the government filed in the Supreme Court an opposition to the Reporters Committee’s Motion to Intervene. *See Ex. A* (Government’s Opp’n to Mot. to Intervene, *In re Grand Jury Subpoena*, Nos. 18A669, 18M93, 18-948 (S. Ct. Jan. 25, 2019)). Neither party has opposed the Reporters Committee’s motion in this Court, *see Fed. R. App. P. 27(a)(3)(A)* (setting 10-day time limit to respond to motion). The Reporters Committee respectfully submits this Statement of the Status of Related Matters.

In its response filed in the Supreme Court, the government stated that it believes that this Court should “address in the first instance movant’s request for unsealing of the underlying record” and that this Court “would be better situated [than the Supreme Court] to address what additional documents, if any, should be unsealed and what redactions are *necessary* to protect against disclosure of matters occurring before a grand jury.” Ex. A at 3 (emphasis added). Although the government appears to dispute in the Supreme Court that the public’s right of access applies to this appeal, Ex. A at 2, no party has advanced a similar argument

in this Court, *see* Fed. R. App. P. Rule 27(a)(3)(A).¹ Consistent with the government’s request that this Court resolve the Reporters Committee’s motion before the Supreme Court does, this Court should grant the unopposed Motion to Unseal and direct the parties to file as soon as possible public versions of the briefs, the record, and the oral argument transcript in this appeal, making only those redactions narrowly tailored to support the compelling interest of preserving the secrecy of a matter occurring before a grand jury.

Any redactions the parties propose should be rigorously scrutinized, particularly given the parties’ longstanding penchant for over-sealing—one that has continued even in the most recent filings before the Supreme Court. For instance, the public version of the Petition for a Writ of Certiorari filed in this case inexplicably redacts the names of the law firm and attorney(s) representing Petitioner. Ex. B. Notwithstanding that redaction, the government has revealed Petitioner’s counsel’s name (and law firm) to counsel for the Reporters Committee. Specifically, when the government served by email its response to the Reporters Committee’s Supreme Court Motion to Intervene, the government cc’d Petitioner’s

¹ The Reporters Committee acknowledges that the parties have filed several documents since it moved to unseal. *See* Dkt. Entries dated Jan. 16, 17, 22 , 23, 25. No party has served these filings on the Reporters Committee, nor have any of these filings been made public. Based on the docket’s coding system, none of these filings appears to respond to the Reporters Committee’s motion.

attorney. Rather than objecting to this revelation, Petitioner’s counsel responded to the full email group and acknowledged receipt. Based on these emails, counsel for the Reporters Committee now knows the name of the law firm and counsel representing Petitioner despite the over-redacted Petition and the over-redacted proceedings in this Court. The parties plainly do not believe that there is a compelling reason under Federal Rule of Criminal Procedure 6(e) or otherwise to keep secret the identity of Petitioner’s counsel, having revealed it to a non-party public interest group whose mission includes ensuring public access to and public dissemination of information. This disclosure alone warrants unsealing. *See In re Motions of Dow Jones & Co.*, 142 F.3d 496, 505 (D.C. Cir. 1998) (noting that where “attorney decided to reveal” name of “person subpoenaed to appear before the grand jury,” such information was “no longer a secret”).

Moreover, no party has explained publicly why the disclosure of Petitioner’s own identity to the public would harm the secrecy of a matter occurring before a grand jury—particularly where contempt sanctions have been imposed by the district court and affirmed by this Court. Nor is the government likely to offer such an explanation unless this Court recognizes that the public has a constitutional and common law right of access that applies to this appeal—a right that neither party has disputed in this Court but one the government has denied exists in the Supreme Court, Ex. A at 2. As the Reporters Committee explained, there is a

longstanding history in this country that contempt proceedings and appellate proceedings are open to public access. *See* Mot. to Unseal at Arg. Pt. I.A-I.B. The parties therefore must justify why redacting the name of the company now held in contempt is narrowly tailored to protect the secrecy of a matter occurring before a grand jury—or any other compelling governmental interest, Mot. to Unseal at Arg. Pt. I.C—just as they must justify any other redactions they propose.

This Court should grant the Reporters Committee’s Motion to Unseal and direct the parties to file public versions of the briefs, record, and oral argument transcript in this appeal such that the only redactions allowed are those narrowly tailored to support a compelling governmental interest.

January 28, 2019

LEE ROSS CRAIN
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166-0193
(212) 351.4000

EMILY RIFF
GIBSON, DUNN & CRUTCHER LLP
1801 California Street, Suite 4200
Denver, Colorado 80202-2642
(303) 298.5700

Respectfully submitted,

/s/ Theodore J. Boutrous
THEODORE J. BOUTROUS
Counsel of Record
GIBSON, DUNN & CRUTCHER
LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
(213) 229.7000
tboutrous@gibsondunn.com

BRUCE D. BROWN
KATIE TOWNSEND
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, DC 20005
Phone: 202.795.9300
Facsimile: 202.795.9310

Counsel for Movant Reporters Committee for Freedom of the Press

CERTIFICATE OF COMPLIANCE

1. This Statement of the Status of Related Matters complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d) because it contains 871 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f); and
2. This Statement of the Status of Related Matters complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

January 28, 2019

/s/ Theodore J. Boutrous
THEODORE J. BOUTROUS
Counsel of Record
GIBSON, DUNN & CRUTCHER
LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
(213) 229.7000
tboutrous@gibsondunn.com

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January, 2019, I caused the foregoing Statement of the Status of Related Matters to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the Court's CM/ECF system. I further certify that four copies of this Statement were filed with the clerk, pursuant to Circuit Rule 27(b), by hand delivery to the clerk, pursuant to Circuit Rule 25(d). Because the parties and their counsel are not currently public, we are unable to effect service of the Statement of the Status of Related Matters on the parties.

January 28, 2019

/s/ Theodore J. Boutrous
THEODORE J. BOUTROUS
Counsel of Record
GIBSON, DUNN & CRUTCHER
LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
(213) 229.7000
tboutrous@gibsondunn.com

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1,
the Reporters Committee for Freedom of the Press certifies that it is an
unincorporated association of reporters and editors with no parent corporation and
no stock.

January 28, 2019

/s/ Theodore J. Boutrous
THEODORE J. BOUTROUS

Counsel of Record
GIBSON, DUNN & CRUTCHER
LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
(213) 229.7000
tboutrous@gibsondunn.com

CERTIFICATE OF PARTIES

Because the identity of the parties is not public, the Reporters Committee for Freedom of the Press is not able to provide a certificate of parties, intervenors, and amici who have appeared before the district court and are in this court, pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A).

Date January 28, 2019

/s/ Theodore J. Boutrous

THEODORE J. BOUTROUS

Counsel of Record

GIBSON, DUNN & CRUTCHER
LLP

333 South Grand Avenue
Los Angeles, California 90071-3197
(213) 229.7000
tboutrous@gibsondunn.com